



To: The Michigan House Judiciary Committee
From: Cynthia Gray, Director, Center for Judicial Ethics,
American Judicature Society
Date: June 13, 2007
Re: Judicial disqualification and discipline

Grounds for judicial disqualification

With five exceptions, all states have rules for when judicial disqualification or recusal is required in their codes of judicial code; therefore, because the code applies to the justices of the state's supreme court, the grounds for disqualification of the justices are established by the code of judicial conduct. (Most states also have additional rules or statutes that may apply.) The grounds in the state codes are very similar to those in the ABA model code of judicial conduct.

The five exceptions are Louisiana, Texas, Montana, California, and Michigan, but in Texas, Montana, and California the grounds are prescribed elsewhere than in the code of judicial conduct.

The Louisiana code of judicial conduct provides that a judge "should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule." The specific grounds are established in the Louisiana rules of criminal procedure and rules of civil procedure, which apply to "a judge of any court, trial or appellate."

Rule 18b of the Texas Rules of Civil Procedure establishes rules for disqualification and recusal, and Rule 16 of Texas Rules of Appellate Procedure provides that "the grounds for recusal of an appellate court justice or judge are the same as those provided in the Rules of Civil Procedure." The grounds for disqualification in Montana are established in the Montana Rules of Court, which

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The Opperman Center 2700 University Avenue Des Moines, Iowa 50311
Telephone 515-271-2281 Fax 515-279-3090 www.ajs.org

identify the actions in which "any justice, judge, justice of the peace, municipal court judge or city court judge must not sit or act."

The California code of judicial ethics provides that "a judge shall disqualify himself or herself in any proceeding in which disqualification is required by law." The California Code of Civil Procedure established the grounds for disqualification, but the code of civil procedure does not apply to appellate judges. Therefore, there was a gap in the regulations that left appellate judges in California with no disqualification rules. Several years ago, however, the California Supreme Court realized the gap existed and, after a brief time for study, amended the code of judicial ethics to create a provision addressing specifically when appellate judges are required to disqualify, which are similar to the rules for trial judges. A copy of the rules for California appellate judges is attached.

Apparently, the gap that existed in California also exists in Michigan, but the Michigan Supreme Court has not taken any action. That leaves the justices of the Michigan Supreme Court as the only judges in the country who do not have rules that establish grounds for disqualification. Even the justices on the United States Supreme Court are governed by such rules. Although the nine justices are not bound by the Code of Conduct for U.S. Judges, they are covered by the federal statute (28 U.S.C. § 455) that provides "any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" and also sets forth specific circumstances that require a judge to disqualify himself or herself.

Procedures for disqualification

Although I have not reviewed every state's rules of appellate procedure, my research so far indicates that very few states have specific rules that address how a party should raise the issue of disqualification of a supreme court or appellate court justice. A copy of the provisions from some of the states is attached.

Discipline proceedings for supreme court justices

In all but three states, the final decision in judicial discipline proceedings (at least absent an agreed disposition) is made by the state supreme court, either acting on a recommendation of the judicial conduct commission or reviewing a commission decision at the judge's request. Thus, in 47 states, if a supreme court justice is the subject of a disciplinary proceeding, the matter would come before that justice's colleagues for review. (The three exceptions are Illinois,

Oklahoma, and Texas, which have bifurcated proceedings for discipline cases involving all types of judges, in which the final authority is in a body other than the state supreme court.)

Therefore, several states have provisions that create a substitute supreme court when there is a finding of misconduct by a supreme court justice. Usually, the members of the substitute supreme court are chosen by lot or seniority from court of appeals judges. A copy of the special provisions from those states are attached. Even absent an express rule, when a state supreme court justice is the subject of discipline proceedings, the other members of the supreme court may disqualify themselves from the review of discipline proceedings involving a colleague, and the case is heard by substitute justices. See, e.g., *In the Matter of Starcher*, 501 S.E.2d 772 (West Virginia 1998) (the justices of the Supreme Court of Appeals "having deemed themselves disqualified" from hearing a recommendation for the discipline of a member of the court, the Chief Justice designated two senior status judges and three judges as acting justices).

California Code of Judicial Ethics
Canon 3E

(3) An appellate justice shall disqualify himself or herself in any proceeding if for any reason: (i) the justice believes his or her recusal would further the interest of justice; or (ii) the justice substantially doubts his or her capacity to be impartial; or (iii) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial. Disqualification is required in the following instances:

(a) The appellate justice has appeared or otherwise served as a lawyer in the pending matter, or has appeared or served as a lawyer in any other matter involving any of the same parties if that other matter related to the same contested issues of fact and law as the present matter.

(b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.

(c) The appellate justice represented a public officer or entity and personally advised or in any way represented such officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) The appellate justice or his spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisory, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, fraternal or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary interests and those of his or her spouse and of minor children living in the household.

(e) The justice or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse thereof, is a party or an officer, director or trustee of a party to the proceeding, or a lawyer or spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the justice or of the justice's spouse, or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has a personal knowledge of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer. The justice's spouse or a person within the third degree of relationship to the justice or his or her spouse, or the person's spouse, was a witness in the proceeding.

(g) A temporary or permanent physical impairment renders the judge unable properly to perceive the evidence or conduct the proceedings.

Mississippi Rules of Appellate Procedure

RULE 48C. DISQUALIFICATION OF JUSTICES OR JUDGES OF THE APPELLATE COURTS

(a) Disqualification of Justices and Judges of the Supreme Court or Court of Appeals.

(i) Any party may move for the recusal of a justice of the Supreme Court or a judge of the Court of Appeals if it appears that the justice or judge's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or, if the party is represented, by the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true.

(ii) Any such motion for recusal shall be filed no later than 30 days following the notification by the clerk of the court that a case has been assigned to either appellate court, or, in the case of a motion or petition which is not filed within a proceeding initiated by a notice of appeal or where the facts upon which the motion is based could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted.

(iii) Motions for recusal shall be decided in the first instance by the justice or judge who is the subject of the motion. The remainder of the court on which such justice or judge serves shall, prior to the order being entered, be informed of a decision of a justice to deny recusal, and such decision shall be subject to review by the entire court upon motion for reconsideration filed within 14 days following the issuance of an order denying recusal.

Nevada Rules of Appellate Procedure

RULE 35. DISQUALIFICATION OF JUSTICES

(a) Motions and Charges re Disqualification; Timeliness of Filing; Burden of Proof; Certificate of Attorney. Any ground for disqualification or recusal of a supreme court justice that is not raised in a timely manner through the filing of a formal motion or charge shall be deemed waived. In cases or proceedings before the Supreme Court of Nevada, motions and charges seeking the disqualification or recusal of a justice must not be based on any ground that the moving party has theretofore omitted to raise formally as soon as possible after receiving either actual or constructive notice thereof. In no event will the supreme court deem timely any motion or charge seeking the disqualification or recusal of a justice who has heard argument upon, or otherwise considered, any contested matter in the cause, except as to grounds based on fraud or like illegal conduct of which the challenging party had no notice until after the contested matter was considered.

The motion or charge, the supporting affidavits, and the supporting brief of legal points and authorities, must not claim or suggest ostensible facts that are neither established by proper averments in the supporting affidavits nor by the record of the case. Any and all assertions of fact that are not documented by proper sworn averments in the affidavits, as provided herein, must be supported by citations to the specific page and line where support appears in the record of the case.

The motion or charge must contain the certificate of the attorney, as an officer of the court, reciting specifically under oath that the attorney has read the motion or charge and supporting documents, that they all are in the form required by this rule, that based on personal investigation the attorney believes all grounds asserted to be legally valid and all supporting factual allegations to be true, and that the motion is made in good faith and not for purposes of delay or for other improper motive.

(b) Form of Motions and Charges; Supporting Affidavits. A motion or charge seeking disqualification or recusal of a justice must be in writing, must set forth each ground for disqualification separately and with particularity, and for each ground must be supported, as to every fact alleged, by affidavit made upon personal knowledge by a person or persons affirmatively shown competent to testify. Supporting affidavits must set forth only such facts as would be admissible in evidence, and, as to all incidents or occurrences alleged, must establish timeliness by stating specifically the times and circumstances under which it is claimed that the same were discovered. Statements not in this form must not be filed. The burden of properly supporting with particularity both the timeliness of the motion or charge, and the grounds therefor, is upon the party who tenders the motion or charge.

(c) Legal Authorities. All motions and charges seeking disqualification or recusal of a justice must be accompanied by a brief of legal points and authorities, setting forth specifically and under separate headings the legal basis for each ground alleged in the motion or charge. Failure to present substantial legal authority for any ground is a basis for summary denial of the motion or charge, and is a willful violation of this rule.

(d) Personal Service Upon Opposing Counsel; Response; Reply Allowed Only With Leave of Court. The motion or charge, and all supporting documents, must be personally served upon counsel for all adverse parties at least one (1) full judicial day before being tendered to the clerk of this court for filing, and unless otherwise ordered all adverse parties will have ten (10) days from the date on which a motion or charge has been filed in which to file opposition, including answering points and authorities and affidavits. A reply to the opposition must not be tendered to the clerk for filing without leave of court first granted upon application to the chief justice or other justice next senior in commission against whom the motion or charge is not directed, after three (3) days' notice in writing to all interested parties. A motion or charge for disqualification or recusal will be decided, without further written submissions from the parties, upon the filing of the motion or charge, and the opposition, together with any reply that has been authorized. Serial motions or charges, whether entitled as separate challenges, or as supplements, or entitled in any other way, must not be filed, and will not be entertained. Telefax communications must not be employed to expand upon authorized submissions or in any way to avoid the limitations stated herein.

The challenged justice may tender a response to the motion or charge, either in writing, or orally at any hearing that may be ordered by the court.

(e) Sanctions for Abuse or Failure to Comply With Rule. For any violation of this rule, or for the filing of any motion or charge or supporting documents found to be tendered for purposes of delay, lacking diligence or lacking good faith in any particular, the court may impose appropriate sanctions, including awards of costs, attorneys' fees, and damages to any person injured, delayed or inconvenienced by the motion or charge. If the supreme court determines that any abuse or misconduct has occurred warranting professional sanctions beyond monetary awards, the court may convene a hearing for the purpose of determining the same or, in its discretion, may appoint a master to conduct a hearing in its stead and to make recommendations as to the sanctions to be imposed.

Any true and relevant statement properly made in presenting a motion or charge as provided by this rule is privileged. There is no privilege to present defamatory matter in a motion or charge, or in supporting documents, that is untrue or that is contained in any paper filed without authorization under this rule.

[Added; effective May 25, 1990.]

RULES OF THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

Rule 21A. Motions for Recusal.

A motion for recusal shall: (1) be made in writing, (2) state clearly and concisely in separately numbered paragraphs each ground relied upon as a basis for recusal together with the facts alleged in support thereof and, if applicable, citations to any pertinent provision of Supreme Court Rule 38, The Code of Judicial Conduct, (3) contain a verification by affidavit of any facts upon which the motion is grounded, unless the facts are apparent from the record or from the papers on file in the case, or are agreed to and stated in a writing signed by the parties or their attorneys, (4) except for good cause shown, be filed with the court by the appealing party with the notice of appeal or by another party within twenty (20) days of the filing of the appeal, and (5) certify the date or dates when the movant first became aware of the facts set forth in the motion.

Except for good cause shown, failure to file a timely motion for recusal shall be deemed a waiver of the movant's right to request recusal.

The Court's ruling thereon shall issue promptly and be supported by findings of fact with respect to the allegations contained in the motion.

Oregon Rules of Appellate Procedure
Rule 8.30 DISQUALIFICATION OF JUDGE

(1) If a party or counsel for a party discovers that a sitting Court of Appeals or Supreme Court judge participated in the case in the proceedings being appealed or reviewed, the party or counsel shall notify the Administrator by letter of the judge's participation as soon as possible after discovering the judge's participation.

(2) The duty of a party or counsel to notify the Administrator of a sitting appellate judge's previous participation in the proceeding includes, in post-conviction relief and habeas corpus cases, the underlying criminal proceeding.

(3) (a) In addition to the notice required by subsection (1) of this rule, a party or attorney for a party in a case before the Supreme Court or Court of Appeals may move to disqualify a judge of the Supreme Court or Court of Appeals for one or more of the grounds specified in ORS 14.210, or upon the ground that the judge's participation in the case would violate the Oregon Code of Judicial Conduct. The motion shall be filed as soon as practicable after the party or attorney learns of the ground for disqualification.

(b) (i) The Administrator shall forward a copy of the motion to the judge against whom the motion is directed without waiting for an answer to the motion. The judge may grant the motion with or without an answer having been filed. If the judge does not believe that the motion is well taken, the judge shall refer the motion to the presiding judge for decision. The judge's referral may be accompanied by any written response the judge may wish to make. If the judge accompanies the referral with written response, the judge shall provide the parties with a copy of the written comments. The presiding judge may rule on the motion or may refer the motion to the full court for a decision.

(ii) In the Court of Appeals, "presiding judge" means the Chief Judge, unless the motion to disqualify is directed at the Chief Judge, in which case "presiding judge" means the next senior judge available to rule on the motion. In the Supreme Court, "presiding judge" means the Chief Justice, unless the motion to disqualify is directed at the Chief Justice, in which case "presiding judge" means the next senior judge available to rule on the motion.

Texas Rules of Appellate Procedure

RULE 16. DISQUALIFICATION OR RECUSAL OF APPELLATE JUDGES

16.1 Grounds for Disqualification. The grounds for disqualification of an appellate court justice or judge are determined by the Constitution and laws of Texas.

16.2 Grounds for Recusal. The grounds for recusal of an appellate court justice or judge are the same as those provided in the Rules of Civil Procedure. In addition, a justice or judge must recuse in a proceeding if it presents a material issue which the justice or judge participated in deciding while serving on another court in which the proceeding was pending.

16.3 Procedure for Recusal.

(a) Motion. A party may file a motion to recuse a justice or judge before whom the case is pending. The motion must be filed promptly after the party has reason to believe that the justice or judge should not participate in deciding the case.

(b) Decision. Before any further proceeding in the case, the challenged justice or judge must either remove himself or herself from all participation in the case or certify the matter to the entire court, which will decide the motion by a majority of the remaining judges sitting en banc. The challenged justice or judge must not sit with the remainder of the court to consider the motion as to him or her.

(c) Appeal. An order of recusal is not reviewable, but the denial of a recusal motion is reviewable.

Special rules for cases involving supreme court justices

Alaska Rules of Appellate Procedure

Rule 406. Review of Proceedings of Commission on Judicial Conduct.

(f) When the proceedings involve a supreme court justice, no justice may participate in the review, and the chief justice shall appoint a panel from among the court of appeals and superior court judges as justices pro tempore to review the proceedings. If the proceedings involve the chief justice, the justice having the longest tenure on the supreme court who has not participated in the proceedings shall appoint the panel.

Arkansas, Constitution, Amendment 66(c)

In any hearing involving a Supreme Court justice, all Supreme Court justices shall be disqualified from participation.

California, Constitution, Article 6, § 18(f)

A determination by the Commission on Judicial Performance to admonish or censure a judge or former judge of the Supreme Court or remove or retire a judge of the Supreme Court shall be reviewed by a tribunal of 7 court of appeal judges selected by lot.

Florida Constitution Article 5, § 12

§ 12. Discipline; removal and retirement

(e) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the judicial qualifications commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

Georgia Judicial Qualifications Commission Rule 24

RULE 24. COMPLAINT AGAINST A MEMBER OF THE SUPREME COURT

A complaint against a member of the Supreme Court shall proceed in the same manner as a complaint against any other judge except:

- (a) If the Commission recommends a sanction and the respondent consents to the sanction, the Commission shall impose the sanction and there shall be no appeal or further review by the Court.
- (b) If the Commission recommends a sanction and the respondent objects to the sanction, the Commission shall proceed in the manner outlined in Rule 14. However, all current members of the Court shall be automatically disqualified and a substitute Court consisting of the current Chairperson and the six (6) immediate past Chairpersons of the Council of Superior Court Judges shall be impaneled to decide the matter in lieu of the sitting members of the Supreme Court. If any such Chairperson shall be disqualified or otherwise fails or refuses to serve, the next preceding Chairperson of the Council shall serve as a member of the substitute Court.

Hawaii Supreme Court Rules, Rule 8

RULE 8. Judicial discipline.

8.11 Charge against supreme court justice.

Any charge filed against a member of the supreme court shall be heard and submitted to the court in the same manner as charges concerning other judges, except that the member being charged shall be automatically disqualified. A panel of at least three justices shall hear the matter. In the event that there are less than three justices remaining on the court, the chief justice or the most senior associate justice remaining on the court shall appoint a judge of the intermediate court of appeals, a circuit court judge, a retired justice of the supreme court, or any combination thereof to sit in the matter.

Indiana, Rules for Admission to the Bar and the Discipline of Attorneys, Rule 25 VIII F (4)

In the event the notice filed under Rule VIIF(1) is directed toward a member of the Supreme Court, the provisions of this paragraph shall apply.

- (a) At the time the notice is filed, all Justices of the Supreme Court, except the Chief Justice, shall recuse themselves from the proceedings. Should the Chief Justice, for any reason, be unable to participate in such proceedings, the most senior member of the Supreme Court, not otherwise disqualified, shall continue to serve. The Chief Justice or the member of the Supreme Court continuing to serve under this provision shall be the presiding member of the Supreme Court for all proceedings relating to the notice.
- (b) The vacancies on the Supreme Court created by the above procedure shall be filled for the limited purpose of the judicial disciplinary proceedings by members of the Indiana Court of Appeals chosen pursuant to this provision. Six Judges of the Court of Appeals shall be randomly selected by the Clerk of the Supreme Court and Court of Appeals. Advisement of the members of the Court of Appeals selected under this procedure shall

be given to the Commission and the judicial officer. Within seven days after advisement of the selection is issued, the Commission shall strike one judge selected and within seven days after the judge is stricken by the Commission, the judicial officer shall strike one judge. If the Commission or the judicial officer fails to strike a judge under this procedure, the Clerk of the Supreme Court shall strike at random in their stead.

(c) In the event all members of the Supreme Court are unable to participate in a judicial disciplinary proceeding, the Clerk of the Supreme Court and Court of Appeals shall randomly select seven members of the Indiana Court of Appeals to serve in such proceedings and each side shall strike one judge under the procedure set forth in Rule VIII(4)(b) above.

Minnesota, Rules of Board on Judicial Standards, Rule 13(H)

When any Formal Complaint has been filed against a member of the Supreme Court, the review under Rule 13 shall be heard and submitted to a panel consisting of the Chief Judge of the Court of Appeals or designee and six others chosen at random from among the judges of the Court of Appeals by the Chief Judge or designee.

Mississippi, Constitution, Article 6, §177A

A recommendation of the commission on judicial performance for the censure, removal or retirement of a justice of the supreme court shall be determined by a tribunal of seven (7) judges selected by lot from a list consisting of all the circuit and chancery judges at a public drawing by the secretary of state. The vote of the tribunal to censure, remove or retire a justice of the supreme court shall be by secret ballot and only upon two-thirds (2/3) vote of the tribunal.

Massachusetts General Laws 211C § 9

§ 9. Charges against supreme judicial court member

The chief justice and the six most senior justices of the appeals court other than the chief justice shall serve in the place of the supreme judicial court when charges are brought against a member of the supreme judicial court.

North Carolina General Statutes, § 7A-378

§ 7A-378. Censure, suspension, or removal of justice of Supreme Court.

(a) The recommendation of the Judicial Standards Commission for censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for censure, suspension, or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the

senior in service, excluding the judge who is chairman of the Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service. (1979, c. 486, s. 1; 2006-187, s. 11.)

Ohio, Supreme Court Rules for the Government of the Judiciary, Rule 2

All complaints and grievances alleging misconduct of the Chief Justice or a Justice of the Supreme Court, or alleging that the Chief Justice or a Justice of the Supreme Court is unable to discharge the duties of judicial office by virtue of a mental or physical disability, shall be filed with Disciplinary Counsel. Disciplinary Counsel promptly shall forward any complaints or grievances to the Chief Justice of the Courts of Appeals elected pursuant to section 2501.03 of the Revised Code.

The Chief Justice of the Courts of Appeals promptly shall forward a copy of the complaint or grievance to the Chief Justice or Justice of the Supreme Court for response within fourteen days. Upon receipt of the response, or if no response is made, the Chief Justice of the Courts of Appeals shall appoint a panel of three presiding judges of the Courts of Appeals to review the complaint or grievance and response.

The panel shall promptly review the complaint or grievance and response to determine if there is sufficient cause to warrant further investigation or if the matter should be dismissed. If the panel determines that sufficient cause for further investigation exists, it shall inform the Chief Justice of the Courts of Appeals who shall appoint a special investigator to conduct further investigation as may be appropriate. The special investigator shall be an attorney admitted to practice in Ohio and shall not be an employee or appointee of the Supreme Court or have any interest in a pending case before the Supreme Court while serving as the special investigator. The special investigator shall have the power to issue subpoenas and to cause testimony to be taken under oath. Upon completion of the investigation, the special investigator either shall report to the Chief Justice of the Courts of Appeals that the matter should be dismissed or prepare and file a formal complaint with the Chief Justice of the Courts of Appeals in the name of the special investigator as relator. The Chief Justice of the Courts of Appeals shall convene the panel described in Section 4 of this rule that shall hear and decide the complaint.

The special investigator shall be paid expenses and reasonable compensation, upon approval by the Chief Justice of the Courts of Appeals, from the Attorney Registration Fund. The Chief Justice of the Courts of Appeals may authorize a special investigator to employ counsel or support staff as may be necessary to assist in the proceedings and any subsequent appeals, and may authorize payment of fees, compensation, and expenses from the Fund.

Unless the justice against whom the grievance has been filed agrees otherwise, the matter shall remain private unless and until a formal complaint is filed in the name of the special investigator as relator.

Pennsylvania Constitution Article 5, § 18

§ 18. Suspension, removal, discipline and other sanctions

(c) Decisions of the court shall be subject to review as follows:

(1) A justice, judge or justice of the peace shall have the right to appeal a final adverse order of discipline of the court. A judge or justice of the peace shall have the right to appeal to the Supreme Court in a manner consistent with rules adopted by the Supreme Court; a justice shall have the right to appeal to a special tribunal composed of seven judges, other than senior judges, chosen by lot from the judges of the Superior Court and Commonwealth Court who do not sit on the Court of Judicial Discipline or the board, in a manner consistent with rules adopted by the Supreme Court. The special tribunal shall hear and decide the appeal in the same manner in which the Supreme Court would hear and decide an appeal from an order of the court.

Rhode Island, §8-16-7(b)

Whenever the Commission shall recommend the removal of a justice of the Supreme Court from office and the recommendation has been approved after compliance has been had with the provisions of § 8-16-6 providing for a review of recommendations by the Supreme Court, that court shall thereupon transmit its findings and recommendation to the speaker of the house of representatives recommending therein the initiation of proceedings for the removal of the justice of the Supreme Court pursuant to the provisions of article X, section 4, and article XI of the constitution of this state, providing for the impeachment or removal of justice of the Supreme Court.

Vermont, Rules of Supreme Court for Disciplinary Control of Judges

(1) A complaint against a member of the Supreme Court shall proceed in the same manner as a complaint against any other judge, except as set forth in this rule.

(2) Upon a motion of the Board or the Court for the temporary suspension of a member of the Supreme Court under Rule 5, a Special Supreme Court shall be constituted to hear the matter. The Special Supreme Court shall consist of five judges appointed by the Administrative Judge for Trial Courts, or the next senior trial judge if the Administrative Judge is unavailable, under the process established by the Administrative Judge for the appointment of pro tempore judges to the Supreme Court in cases where a justice of the Court is disqualified.

(3) The Special Supreme Court shall hear any appeal from a decision of a hearing panel involving a complaint against a member of the Supreme Court.

Washington, Court Rules, Part I, Disciplinary Rules for Judges, Rule 13

If a justice of the Supreme Court is the subject of a recommendation for discipline or retirement, a substitute panel of nine judges shall be selected as provided in this rule to serve as justices pro tempore to consider the commission recommendation.

The presiding chief judge of the Court of Appeals shall be one member of the substitute panel and shall be the chief justice pro tempore unless the judge disqualifies himself or herself or is otherwise disqualified by section (c). The clerk of the Supreme Court shall

select the balance of the justices pro tempore by lot from all remaining active Court of Appeals judges. If there are fewer than nine judges of the Court of Appeals who are not disqualified, the panel shall be completed by the clerk by selecting by lot from the active superior court judges until a full panel of nine justices pro tempore has been selected.

Wyoming, Rules Governing the Commission on Judicial Conduct and Ethics, Part 1, Rule 4

Upon the occurrence of a circumstance necessitating the appointment of a special supreme court, the Wyoming Supreme Court will designate five district judges who are not members of the commission to act in the place of the supreme court for the limited purposes contemplated by Art. 5, § 6 of the Wyoming Constitution.